

**TRADE PRACTICES ACT 1974**

**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND  
CONSUMER COMMISSION GIVEN FOR THE PURPOSES OF  
SECTION 87B**

**BY  
HAIER ELECTRICAL AUSTRALIA PTY LTD  
ACN. 101 784 918**

**BACKGROUND**

- (1) HAIER ELECTRICAL AUSTRALIA PTY LTD ACN. 101 784 918 ('Haier Australia'), imports white goods from Haier Group China for exclusive supply, pursuant to a Heads of Agreement arrangement with Retravisio Pty Ltd ACN. 001 377 000, to Retravisio bannered stores throughout Australia.
- (2) Ending on 31 January 2003, Haier Electrical Appliances Corporation Ltd (China) had a trading agreement with Ai Xin International Pty Ltd ACN. 084 823 870 ('Ai Xin') (trading as Higher Electronics Australasia), via its associated entity, JNL Electronics (Australasia) Pty Ltd (ACN 086 851 372), to distribute Haier branded products in Australia. JNL Electronics is a company wholly owned by Ai Xin International Trading Pty Ltd.
- (3) Since 1 February 2003, Haier Australia has been the sole distributor for Haier branded products in Australia. Haier Australia is 43% owned by JNL Electronics (Australia) Pty Ltd and 52% owned by Haier Electrical Appliances Corporation Ltd (China).
- (4) Between August 2001 and 17 May 2002 Ai Xin supplied various Retravisio stores with 425 units of Haier washing machine model XQJ 100-96 labelled as 10kg in capacity and bearing a 2-Star energy rating. Between August 2001 and 4 November 2002 Ai Xin supplied various Retravisio stores with 523 units of Haier washing machine model XQJ 50-31 labelled as 5kg in capacity and bearing a 2-Star energy rating.
- (5) The Australian Greenhouse Office has an agreement with the Australian Competition and Consumer Commission ('the Commission') to refer cases to the Commission of allegedly misleading conduct by electrical appliance suppliers in relation to energy labelling.
- (6) The Australian Greenhouse Office referred information to the Commission regarding the failure of Haier washing machine models XQJ 100-96 and XQJ50-31 to satisfy the check-testing program.

- (7) The tests were commissioned by the Office of Chief Electrical Inspector Victoria on behalf of the National Appliance and Equipment Energy Efficiency Committee. The testing program is conducted as part of the Committee's responsibility for coordinating the national energy efficiency labelling program.
- (8) The test results for the XQJ100-96 recorded that the machine failed the energy consumption claim by a significant margin, failed wash performance requirements by a substantial margin (could not wash a 10kg load of washing) and its spin performance was highly variable under subsequent re-test. The test results for the XQJ50-31 recorded that the machine failed the energy consumption claim by a substantial margin and failed minimum wash performance requirements by a substantial margin (could not wash a 5kg load of washing).
- (9) A consequence of these failures was that Haier washing machine models XQJ 100-96 and XQJ50-31 were deregistered by the Queensland Electrical Safety Office (Department of Industrial Relations) on 5 April 2002 and 19 August 2002, respectively.
- (10) Following an investigation of this matter by the Commission, the Commission reached the view that Ai Xin had contravened the Trade Practices Act 1974 ('the Act') in that Ai Xin made false or misleading representations in contravention of sections 52, 53(a), 53(c) and 55 of the Act. The Commission considers Ai Xin contravened sections 52, 53(a), 53(c) and 55 of the Act by:
  - (a) falsely representing that Haier washing machine model XQJ 100-96 had a capacity of 10kg and would consume only the amount of energy consistent with the award of a 2-Star energy rating; and
  - (b) falsely representing that Haier washing machine model XQJ50-31 had a capacity of 5kg and would consume only the amount of energy consistent with the award of a 2-Star energy rating.
- (11) By letter dated 28 August 2002, addressed to Mr Louie Zhang, National Product Manager, the Commission communicated to Ai Xin its view that the representations referred to in paragraph (10)(a) may contravene sections 52, 53(a), 53(c) and 55 of the Act. Following that correspondence the Commission, by letter dated 24 September 2002 and addressed to Ms Leanne Aquilina, Office Manager, advised Ai Xin of its view that the representations referred to in paragraph (10)(a) and 4(b) may contravene sections 52, 53(a), 53(c) and 55 of the Act. Subsequent to those letters the Commission and Ai Xin engaged in further correspondence concerning the representations referred to in paragraph 4 above.
- (12) Haier washing machine model XQJ 100-96 was deregistered by the Queensland Electrical Safety Office (Department of Industrial Relations) on 5 April 2002. Ai Xin advised Retravisio Pty Ltd of the deregistration on 17 May 2002. Haier washing machine model XQJ50-31 was deregistered by the Queensland Electrical Safety Office (Department of Industrial Relations) on 19 August 2002. Ai Xin advised Retravisio Pty Ltd of the deregistration on 4 November 2002. As a consequence of the deregistrations, Ai Xin instructed Retravisio Pty Ltd to remove all units from display and return any remaining stock.

- (13) Since this conduct was brought to its attention Haier Australia has begun reviewing the testing procedures undertaken in relation to its products and understands that Haier washing machine models XQJ 100-96 and XQJ50-31 are no longer available for sale in Australia.
- (14) Haier Australia recognises that Ai Xin's conduct contravened the Act and has offered this undertaking in response to the Commission's concerns.

#### **COMMENCEMENT OF UNDERTAKINGS**

- (15) This undertaking comes into effect when:
- a) the undertaking is executed by Haier Australia; and
  - b) the Commission accepts the undertaking so executed.

#### **UNDERTAKINGS**

Haier Australia in hereby undertakes for the purposes of section 87B of the Act:

- (16) That it, and any of its, subsidiaries will not in trade or commerce make false or misleading representations concerning the capacity or energy ratings of any white goods.
- (17) That it will ensure that any white goods distributed by it have been tested at a National Association of Testing Authorities, Australia or an equivalent recognised or accredited testing laboratory indicating compliance with the relevant standard.
- (14) That it will, within 3 months of this undertaking coming into effect, develop a Trade Practices Compliance Program that is in accordance with the Australian Standard for Compliance Programs AS 3806-1998; the aim of which is to create a culture of compliance throughout Haier Australia and to prevent, so far as reasonably possible, contraventions of the Act by itself, its directors, servants or agents. The Trade Practices Compliance Program will remain in effect for a minimum period of 3 years from the date on which the Trade Practices Compliance Program is implemented.
- (15) That it will, as part of the Trade Practices Compliance Program referred to in paragraph 12 above, appoint a senior staff member of Haier Australia with responsibility for the implementation of the Trade Practices Compliance Program and overall trade practices compliance.
- (16) That, once the Trade Practices Compliance Program referred to in paragraph 12 above has been developed, it will commission a report by a suitably qualified professional on the Trade Practices Compliance Program for consideration by the Commission and make whatever changes the Commission may reasonably suggest.
- (17) That it will commission an independent audit to be conducted of the Trade Practices Compliance Program 12 months after its implementation. A suitably qualified professional who is independent of Haier Australia and acceptable to the Commission shall carry out the audit.

- (18) The auditor shall review and report in writing, to the Commission, on:
- (i) the implementation of the Trade Practices Compliance Program and the achievement over the preceding 12 months; and
  - (ii) identify any deficiencies and make recommendations as to any changes to the Trade Practices Compliance Program, if necessary, to ensure the achievement of its objective.
- (19) That it will provide a copy of the auditor's report to the Commission within 21 days of the completion of the audit and adopt, subject to the Commission's approval, any recommended changes made by the auditor to the compliance program.

**ACKNOWLEDGMENTS**

- (20) Haier Australia acknowledges that the Commission will make this undertaking available for public inspection.
- (21) Haier Australia acknowledges that the Commission will from time to time publicly refer to this undertaking.
- (22) Haier Australia acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct.
- (23) Haier Australia acknowledges that the report referred to in paragraph 14 above will be held with this undertaking on the public register.

IN WITNESS of these undertakings  
and its agreement the common seal of  
**HAIER ELECTRICAL AUSTRALIA PTY LTD ACN. 101 784 918**  
was hereunto affixed by authority of the  
Board of Directors in the presence of:

Secretary/Director Jun Zhou Director R. W. Scullen  
This 20<sup>th</sup> day of March 2003  
MR JO ZHOU MR R. W. SCULLEN

ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  
PURSUANT TO SECTION 87B OF THE TRADE PRACTICES ACT 1974

Allan Fels  
.....  
(Professor Allan Fels)  
Chairman

This 29 day of March 2003